BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, JANUARY 7, 2021
6:00 p.m.
Remote Meeting
via
831 Massachusetts Avenue
Cambridge, Massachusetts 02139

Constantine Alexander, Chair
Brendan Sullivan, Vice Chair
Andrea A. Hickey
Jim Monteverde
Laura Wernick
Alison Hammer
Jason Marshall

City Employees
Ranjit Singanayagam
Sisia Daglián

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P R O C E E D I N G S

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(6:00 p.m.)

Sitting Members: Constantine Alexander, Brendan Sullivan, Andrea Hickey, Jim Monteverde, Laura Wernick, Alison Hammer, and Jason Marshall

CONSTANTINE ALEXANDER: Welcome to the January 7 meeting of the Cambridge Board of Zoning Appeals. My name is Gus Alexander, and I am the Chair.

This meeting is being held remotely, due to statewide emergency orders limiting the size of public gatherings in response to COVID-19, and in accordance with Governor Charles Baker's Executive Order of March 12, 2020, temporarily amending certain requirements of the Open Meeting Law, as well as the City of Cambridge temporary emergency restrictions on city meetings, city events, and city permitted events, due to COVID-19, dated May 27, 2020.

This meeting is being video and audio recorded, and is broadcast on cable television Channel 22, within Cambridge. There will also be a transcript of the public proceedings in due course.

All Board members, applicants, and members of the
public will state their name before speaking. All votes
will be taken by roll call.

Members of the public will be kept on mute until
it is time for public comment. I will give instructions for
public comment at that time, and you can also find
instructions on the city's webpage for remote BZA meetings.

How much time you'll have to speak will depend on
the case; typically three minutes. It shouldn't be tight,
but if there's a lot of people who wish to speak, we may cut
that time back, as we did the last meeting we had, with
regard to the 2072 Massachusetts Avenue case. You'll have
up to three minutes to speak.

I'll start by asking the Staff to take Board
member attendance and verify that all members are audible.

SISIA DAGLIAN: Alison?

ALISON HAMMER: Hi, this is Alison Hammer, I'm
here.

SISIA DAGLIAN: Jason?

JASON MARSHALL: Jason Marshall, I'm here.

SISIA DAGLAN: Jim?

CONSTANTINE ALEXANDER: You need Jim, right?

SISIA DAGLIAN: Brendan?

BRENDAN SULLIVAN: Brendan Sullivan, present and audible.

CONSTANTINE ALEXANDER: And I'm present, of course. We have to wait before Jim gets on the phone before we can turn to our first case.

ANDREA HICKEY: Can we skip the first case and go to the second, since they're both at 6:00?

BRENDAN SULLIVAN: Jim's on that one too.

ANDREA HICKEY: Oh, is he?

CONSTANTINE ALEXANDER: Yeah, Jim's on that one as well.

ANDREA HICKEY: What about the third, not heard?

CONSTANTINE ALEXANDER: We're going to continue that case. We can do that one.

ANDREA HICKEY: [Laughter] Okay.

CONSTANTINE ALEXANDER: I'm not sure -- well, I don't think we'll save that much time if we do it out of order.

ANDREA HICKEY: Right.

JASON MARSHALL: I thought I saw him logged in a few minutes ago.
BRENDAN SULLIVAN: Yeah, he was just --

JASON MARSHALL: Maybe he just -- yeah.

CONSTANTINE ALEXANDER: We're trying to track him down remotely.

LAURA WERNICK: So my -- I'm needed for the continuing -- but not the other two? I think I am.

BRENDAN SULLIVAN: Laura's on the Larch Road.

ANDREA HICKEY: Yeah, Laura, you're on Larch Road and then I think the last Mass Ave is continuing, so.

LAURA WERNICK: Okay, but no one called my name for the roll call.

CONSTANTINE ALEXANDER: Jim, where are you?

SISIA DAGLIAN: He's on there, just --.

ANDREA HICKEY: Laura, I didn't get called for the roll call either. Sisia, do you want --

SUSAN AGGER: Okay, Andrea.

ANDREA HICKEY: Andrea Hickey here, and --

SISIA DAGLIAN: Laura.

LAURA WERNICK: Yeah, Laura Wernick here.

ANDREA HICKEY: All right. Just trying to eat up time, Sisia.

CONSTANTINE ALEXANDER: But Andrea, you'll just be
a member of the audience for the first case?

ANDREA HICKEY: Correct, yes.

CONSTANTINE ALEXANDER: Feel free to give comments, if you like.

SISIA DAGLIAN: No, I'm fine, I'm sure.

CONSTANTINE ALEXANDER: Sisia's trying to track down Jim right now, so we're waiting to see what happens.

BRENDAN SULLIVAN: Here's Jim.

JIM MONTEVERDE: Yeah.

CONSTANTINE ALEXANDER: Jim, are you on?

BRENDAN SULLIVAN: He's showing up, but --

CONSTANTINE ALEXANDER: Trying to put him on the screen, but -- not my screen, but. Oh, for the good old days when we had in-person meetings.

BRENDAN SULLIVAN: Are the transcripts in here --

CONSTANTINE ALEXANDER: No, we have no transcripts.

BRENDAN SULLIVAN: -- that have been prepared for Pleasant Street?

CONSTANTINE ALEXANDER: Well, I'm surprised you saw that. Is Jim still on?

BRENDAN SULLIVAN: He's showing like he's logged
1 on, but he's not tuned in.

2 SISIA DAGLIAN: Just give him a minute.

3 CONSTANTINE ALEXANDER: Okay.

4 SISIA DAGLIAN: Jim, can you hear us?

5 ANDREA HICKEY: Sisia, have you been able to reach

6 him by phone?

7 JIM MONTEVERDE: I'm there.

8 SISIA DAGLIAN: Yeah, here it is.

9 CONSTANTINE ALEXANDER: I heard Jim.

10 ANDREA HICKEY: Ok.

11 JIM MONTEVERDE: I'm there.

12 SISIA DAGLIAN: Yeah, he's having technical

13 difficulties.

14 JIM MONTEVERDE: Can you hear me?

15 CONSTANTINE ALEXANDER: You're in?

16 SISIA DAGLIAN: Yes.

17 CONSTANTINE ALEXANDER: Okay.

18 JIM MONTEVERDE: I just showed up. Can you hear

19 me?

20 CONSTANTINE ALEXANDER: Yes, we can. Can you hear

21 us?

22 JIM MONTEVERDE: So really for that. I'm back.
CONSTANTINE ALEXANDER: Okay. I think now that I have all five members on the call, we can move to the cases.

The cases tonight, as probably everyone realizes, are all continued cases.
1

* * * * *

(6:10 p.m.)

Sitting Members: Constantine Alexander, Brendan Sullivan, Jim Monteverde, Alison Hammer, and Jason Marshall

CONSTANTINE ALEXANDER: The first case I'm going to call is Case Number 91137 -- 57 Pleasant Street. Anyone here wishing to be heard on this matter? Is the petitioner on for that?

MONTE FRENCH: This is Monte French; I'm representing the project for the Order.

CONSTANTINE ALEXANDER: Okay. All right. The floor is yours.

MONTE FRENCH: As discussed last time, this is a continuation. I believe in our last hearing, the issue that we had was that the plans were not in hand for the Board, or for the community to review. The contact was based on the overage on area of the addition, or the volume, rather, and the windows on the left side.

Since then, we -- prior to the last hearing, we reduced the volume to meet the 10 percent requirement. And that is reflected in the set that you show. And then we're
as asking for relief on the windows.

CONSTANTINE ALEXANDER: You're not asking for the special permit? Now --

MONTE FRENCH: Yes.

CONSTANTINE ALEXANDER: -- the reason we initiate -- not the reason, but a reason for continuing the case originally was because of strong objections from a neighbor.

MONTE FRENCH: Yes.

CONSTANTINE ALEXANDER: I think you represented to us at the last hearing that a neighbor -- you had met with the neighbor, and the neighbor was satisfied --

MONTE FRENCH: Correct.

CONSTANTINE ALEXANDER: -- and we heard your case the last time; it was very late in the evening because of the earlier case, and that neighbor was no longer available. Do you know if he's -- he plans to be on the call today, tonight?

MONTE FRENCH: I don't think he was able to make the call. I think he was on the last call, but for some reason he was not able to be heard. We've actually engaged with him and set up a rodent control plan to pay for -- it is my understanding by the owner. He is in full support;
we've had good conversations back and forth. We shared the plans, walked him through everything; it's been a very good process.

CONSTANTINE ALEXANDER: Let me go out of order with the way we usually run these meetings, and ask if that neighbor is present, and planning to speak? It would be good. Now is the time to do it. Let me give the rules for doing that.

Any members of the public who wish to speak should now click the icon at the bottom of your Zoom screen that says, "Raise hand." If you're calling in by phone, you can raise your hand by pressing *9 and unmute or mute by pressing *6. So, is there anyone wishing to speak on this matter?

SISIA DAGLIAN: Colin Morgan?

COLIN MORGAN: Hi. I just need to -- I -- is this for all -- is this for just this matter, or did you want anyone who wanted to speak tonight to do that?

CONSTANTINE ALEXANDER: No, no, just for this matter.

COLIN MORGAN: Oh, okay, I thought -- sorry, I'm a few cases forward, so.
CONSTANTINE ALEXANDER: Anyone? No one?

SISIA DAGLIAN: I can't tell. Pam Winters, did you want to speak? Pam Winters?

CONSTANTINE ALEXANDER: Okay, Pam?

PAM WINTERS: Can you hear me?

CONSTANTINE ALEXANDER: Yes.

PAM WINTERS: Okay. I just have a quick question. Is the 2072 Mass Ave case, has that been -- is that --

CONSTANTINE ALEXANDER: That's now how -- I'm sorry, I just answered this question for someone else. We haven't called that case yet.

PAM WINTERS: Oh. Is it going to be called tonight? That was my question. I'm sorry.

CONSTANTINE ALEXANDER: Okay, thank you.

SISIA DAGLIAN: Okay, I don't think anyone else is --

CONSTANTINE ALEXANDER: All right. Apparently, no one is -- this neighbor is not going to speak tonight, and the representation that's made by the petitioner -- the petitioner's representative -- is that this neighbor has been consulted, has been shown the plans, and is in support of the relief being sought.
Is that correct?

COLIN MORGAN: Correct.

CONSTANTINE ALEXANDER: Questions from members of the Board?

BRENDAN SULLIVAN: Brendan Sullivan, I have no questions.

CONSTANTINE ALEXANDER: Jim?

JIM MONTEVERDE: Jim Monteverde, no questions.

CONSTANTINE ALEXANDER: Alison?

ALISON HAMMER: Alison Hammer, no questions.

CONSTANTINE ALEXANDER: And?


CONSTANTINE ALEXANDER: Jason, Jason.

JASON MARSHALL: Jason Marshall, no questions Mr. Chair.

CONSTANTINE ALEXANDER: Thank you, Jason. I'm going to close public testimony. I'm -- I think the plans are self-evident. We're talking about a special permit, which is a lesser standard in terms of needing to be satisfied of a variance. And so, I suggest we can make a -- proceed to a vote, unless anybody feels otherwise.

[Pause]
Okay. I'm going to assume nobody feels otherwise.

JIM MONTEVERDE: Agreed, agreed.

CONSTANTINE ALEXANDER: Okay. The Chair moves that we make the following findings with regard to the special permit that's being sought:

That the requirements of the ordinance cannot be met without the special permit.

That traffic generated or patterns of access or egress resulting from what the relief being sought will not cause congestion, hazard, or substantial change in established neighborhood character.

That the continued operation of or development of adjacent uses, as permitted in the ordinance, will not be adversely affected by what is being proposed.

I should say that in connection with this and the preceding point, we're talking about modest relief; it's basically relocation of windows, that has only an immediate impact on the neighbors and it's been reported, a representative, was that these neighbors have no objection -- have seen what is being proposed and have no objection.

Continuing, there's no nuisance or hazard will be created to the detriment of the health, safety and/or
welfare of the occupant of the proposed use, or the citizens of the city.

And again, the nature of what is being done does not rise to the level of affecting the health, safety and/or welfare of the occupant or the citizens of the city.

And generally, what is being proposed will not impair the integrity of the district or adjoining district, or otherwise derogate from the intent and purpose of this ordinance.

So on the basis of all of these findings, the Chair moves that we grant the special permit requested on the condition that the work proceed in accordance with plans prepared by --

COLIN MORGAN: MFDS.

CONSTANTINE ALEXANDER: MFDS A+P dated 11/23, November 23, 2020, the first page of which has been initialed by the Chair. Brendan?

BRENDAN SULLIVAN: Brendan Sullivan, yes to granting the special permit.

JIM MONTEVERDE: Jim Monteverde, yes to granting the special permit.

ALISON HAMMER: Alison Hammer, yes to granting the
special permit.

CONSTANTINE ALEXANDER: Jason?

JASON MARSHALL: Jason Marshall, yes to granting the special permit.

CONSTANTINE ALEXANDER: Okay. And the Chair votes yes as well.

[All vote YES]

So it's unanimous. Relief granted. Case over.

Thank you.

SISIA DAGLIAN: I need a minute.

CONSTANTINE ALEXANDER: I'm sorry?

SISIA DAGLIAN: I need a minute, because I have an issue. I just need a minute.

CONSTANTINE ALEXANDER: Okay. We're taking a brief break because we have some technical issues on this end of the call.

JASON MARSHALL: Mr. Chairman -- Jason Marshall; I think that was the only case I was on, so I'm going to log off.

CONSTANTINE ALEXANDER: Good. Thank you, Jason, for taking the time.

JASON MARSHALL: See you all.
(6:19 p.m.)

Sitting Members: Constantine Alexander, Brendan Sullivan, Jim Monteverde, Laura Wernick, and Jason Marshall

CONSTANTINE ALEXANDER: Everybody else is on the call -- myself, Brendan, Jim, Andrea and Laura. So the Chair will now call Case Number 97200 -- 74 Larch Road. Anyone here wishing to be heard on this matter?

SHIPPEN PAGE: Thank you, Mr. Chairman. Shippen Page of PAGE & POWELL, 174 Lakeview Avenue, Cambridge, for the petitioners, Shahid and Nadia Azim for 74 Larch Road. Let me provide a little context for this, Mr. Chairman.

This is -- as was the other case -- a continuance from December 10. And the petitioners were asked to continue it to resolve some of the outstanding issues with the neighbors regarding the encroachment of the side yard setback off of Larch Road; another setback violation into the rear yard -- left yard setback, forgive me -- and then the design of the project.

I have only today read the letters in opposition to the project, and I hope that those in opposition have
been able to review the revised plans, which Mike Fields of Sam Kachmar Associates submitted to the city on Monday, but apparently there was some problem getting them uploaded into the system.

And so, those would clearly reflect some of the changes, which would address the opponent's concerns.

Further, my clients have been reaching out to their nearest neighbors, and they will have an opportunity to comment on this.

The major points that we wish to raise are that they have removed the encroachment of the 10-foot side yard setback off of Larch Road, and they've extended the building by eight feet, as I mentioned in my letter to the Board, and they've eliminated the trash area to the rear of the building, eliminating that.

The only remaining source of nonconformity coming out of this project is increasing the FAR to 0.53, where 0.5 is allowed.

The project -- the land area is 237 square feet short of the 6000 square feet requirement for the district, presumably because it's an odd-shaped lot on the corner of Larch Road and Fresh Pond Parkway, which -- had it been
conforming -- it would have had another 118 square feet to play with.

But as it stands, this is the design that has been modified to meet the objections. And if I may, I'd like to take the -- ask their architects to take you through the redesign, and they may do the whole presentation, members of the Board, but off the focus on those areas where they've made the changes. Mike?

CONSTANTINE ALEXANDER: Excuse me, Mr. Page and the -- let me interject with something else. And then we'll go on to the presentation.

SHIPPEN PAGE: Please.

CONSTANTINE ALEXANDER: As you may recall, at the last hearing, when it was continued, some of my fellow Board members raised some legal issues about the relief being sought.

SHIPPEN PAGE: Sure.

CONSTANTINE ALEXANDER: In your submission, this time -- the new submission --

SHIPPEN PAGE: Yep.

CONSTANTINE ALEXANDER: -- you state that the only relief the petitioner is seeking is the de minimis 0.3
average in the allowable FAR to accommodate the -- your client's growing family.

    SHIPPEN PAGE: Yep.

    CONSTANTINE ALEXANDER: That's not true.

    SHIPPEN PAGE: It is true.

    CONSTANTINE ALEXANDER: Excuse me, let me just finish. There is a second element of relief you're seeking. Not only do you need to get the FAR -- relief for the FAR, which is going, as you point out, from 0.5 -- the requirements of the ordinance of 0.5 --

    SHIPPEN PAGE: Yep.

    CONSTANTINE ALEXANDER: -- and you will be at 0.53. But you also need relief for total gross floor area. It's a second form of relief. The ordinance says you can't be more than 2882 feet, according to your filing, and your total -- as proposed, the total gross floor area will be 3059.

    SHIPPEN PAGE: Correct.

    CONSTANTINE ALEXANDER: Okay. My question, and it's a question you're going to have to deal with the Building Department on, is I'm not sure what the answer is. But I think there's a good likelihood that you need a
variance, besides a special permit, because of the two -- because of the gross floor area issue, in addition to the FAR. That's for Mr. Singanayagam to decide initially, and of course there's always a recourse to our Board by anyone who's unhappy with the decision.

So I just want to be clear that this case may not -- I don't know if it will be -- may not be over once -- if we grant relief tonight.

SHIPPEN PAGE: Thank you for that clarification, Mr. Chairman. I've got two questions in response to your concerns. One is structural. And that is that with COVID, it's been extremely difficult to have any kind of dialogue with the members of the ISD to spare the Board having to go through these issues at this hearing.

The second is it seems to me as a matter of logic, that if I'm asking to go beyond the allowable FAR, it's because I'm exceeding the amount of square footage that's being requested. How can these be two different issues?

I'm confused.

CONSTANTINE ALEXANDER: I'm not saying you're wrong with your logic. I'm just simply alerting you and your client that the Legal Department -- the Building
Department may have a different analysis.

And if you're -- they don't give you the answer you want, accept the argument you just presented, you're going to have to come back, or you and your client are going to have to come back before our Board. And you'll be having to come back under a much stiffer legal requirement -- i.e., a variance, as opposed to a special permit.

Frankly, in my observation, if this case were a variance case, I would not be in support --

SHIPPEN PAGE: All right.

CONSTANTINE ALEXANDER: -- for any relief, simply because there is no hardship here.

SHIPPEN PAGE: I --

CONSTANTINE ALEXANDER: Just people want to have a bigger house. That's not the hardship that our zoning laws -- the Commonwealth laws -- are meant to deal with. It's a different type of hardship, and especially given the size of the house that you want to, or your clients want to -- have should we grant relief.

I'm just -- the purpose of this is just to alert you, and I'm going to alert Mr. Singanayagam, it is an issue that's got to be decided by him initially, and we'll go from
there. So I just didn't want anybody to think this case is necessarily over tonight, assuming we grant the relief you're seeking.

SHIPPEN PAGE: So Mr. Chairman, this is very edifying to me.

CONSTANTINE ALEXANDER: I'm sorry?

SHIPPEN PAGE: You and I and the Board have been at this -- you know, a number of times over the past two years, and I think one of the areas of concern is that this crucial Bellalta case has never been codified by the City of Cambridge, and so, part of the time we're forced to deal with parallel realities.

What is the law that governs these kinds of projects? And I would argue in my letter that because the language of the case is so different from what's requires in the ordinance, that I have to get some guidance, because I don't want to have debate with the Board, I respect their time, and want to be sure that I'm dealing in a clear fashion with what I believe to be the applicable law.

And so, I'll be happy to talk to Mr. Singanayam at any time, but I want to make sure that I'm being efficient with my client's time and money to make sure that we can get
to a whatever the goal is, whether we get there or not -- in
the fewest number of steps.

CONSTANTINE ALEXANDER: I acknowledge your point,
and I -- I wish that the city would make a determination as
to what are we supposed to determine; enforce the ordinance
as it's written, or are we supposed to take into account the
case law that suggests that our ordinance as now written is
not consistent with Massachusetts law. That's not something
that this Board can decide, or not tonight anyway.

SHIPPEN PAGE: But I call the --

CONSTANTINE ALEXANDER: So that's the only point.
I'm not arguing with you. I'm just alerting you --

SHIPPEN PAGE: That's fine.

CONSTANTINE ALEXANDER: -- that there may be a
lurking issue here, even after this case is over -- the case
tonight is over.

SHIPPEN PAGE: Very well taken. Thank you, Mr.
Chairman. I will certainly take that under consideration,
and if we can proceed with the -- I'm sure -- I don't want
to drag this case out, because I think there are probably
some neighbors on the line that would like to speak to this.

So if I can just ask Mike Fields to briefly go
through those areas where he's made the changes, because I
don't think it's too much to assume that the Board may
remember the general sense of this property, and then I'll
be happy to address any issues the Board or members of the
Board may have.

Mike, is that okay Mr. Chairman?

CONSTANTINE ALEXANDER: That's fine.

SHIPPEN PAGE: Mike, do you want to take it on, please?

MIKE FIELDS: All right, yeah. Hello, my name is
Mike Fields. I'm here with Sam Kachmar, and I think we can
just skip into the presentation here.

Okay, next slide?

So here we see the massing of the existing counts.

Next slide?

Here is the house with the proposed addition. As
noted, we have pulled everything within the required
setbacks for this property, and have rejiggered it so that
that all works.

Next slide?

This is the view from Fresh Pond, largely behind
the fence.
Next slide?

This is the view from Larch Street, in which we have pulled the addition away from the street -- road -- and it has gotten slightly longer, but we have stepped the height of the building down from the existing. It's about a little less than 25 feet at its highest point.

Next slide?

Here in the site plan, you can see the existing nonconforming condition along the western setback. Nothing on that side, that side will remain unchanged. And then we have pulled the addition within the other setback lines.

Next slide?

In the sun study, we're not casting outside above the property any more than the existing structure does.

Next slide?

BRENDAN SULLIVAN: No, underneath.

MIKE FIELDS: There we go. This is the site plan of the existing with the covered porch to be removed where the new addition would go.

Next slide? Here we see the roof plan with the addition within the setbacks.

Next slide?
This is the floor plan, basements slightly lower than the existing in order to get adequate head height and a sump pump to a rain garden.

Next slide?

Here we see the reconfigured addition and its relationship to the existing house.

Next slide?

Part of the point of the addition is to try and get one of the bedrooms out of the basement so that everyone's up on the second floor, with access to bathrooms.

Next slide?

Here on the third floor, we are converting the unfinished attic space into an office and a play space for the children.

Next slide?

And here we just see the roof plan. In the lower left-hand corner, you have a rendering which shows the house's relationship to Fresh Pond Road. I just wanted to point out the distance between the house and the intersection, which it is substantially back from that point.

Next slide?
Here we see the addition on the Larch Road side. We have also added some additional windows along the first floor. Then in order to help articulate the façade and break up the mass, we've made some of windows larger, so that it is trying to address some of the concerns that the neighbors have had.

Next slide?

This is the view from the north.

Next slide?

Here on the existing nonconforming side, we've removed three windows on the second floor to provide some additional privacy to the abutters.

Next slide?

And then this is the view from Fresh Pond on the south, just showing the family's living area out front.

Next slide?

Again, thank you for your time, and this is a link to a video render showing the exterior. The following slides are views of the existing house, and then the next one is the context of the neighborhood along Larch Street.

And then finally we have the site plan.

Thank you for your time. I think that -- I think
that is it.

SHIPPEN PAGE: Thank you, Mike, that's great. Mr. Chairman, if I might, I just wanted to anticipate a concern of some of the people in opposition -- folks in opposition, the neighbors, who said that the house is already big enough.

And I looked at the square footage of this house, it's less than 2000 square feet on an 8---, on a 6000 roughly square feet lot, and they're asking to go to 3000 square feet more or less.

And I think about the comparative houses on -- that I've been familiar with and it doesn't seem unreasonable to have a 3000 square foot house on a 6000 square feet lot, with due respect to the fact that this is a very old house that hasn't had a great deal of exterior work or additions done to it in nearly 100 years.

So I can understand that it's jarring, but I don't think relatively speaking it's an unreasonable request, considering the FAR in the district is 0.5.

And I would want to have Mr. Azim and Mrs. Azim to come on if they would just to explain to the Board the efforts, they've made with their neighbors to explain the
design changes and to accommodate their concerns. Shahid, are you on the call?

SHAHID AZIM: Yes.

SHIPPEN PAGE: Would you just take the Board through a little bit of the process of trying to share with your neighbors what you want to do?

SHAHID AZIM: Absolutely. So I assume you guys can hear me? So my name is Shahid Azim. I and my wife Nadia, we've been residents of Cambridge since 2001 and residents of 74 Larch Road for the last almost six years now.

Since last meeting, the BZA meeting, we took the feedback in a very sort of positive note. We reached out to folks that had concerns, and spoke to our architects, who have been very creative in presenting a solution that works for our needs, and takes into account the neighborhood's concern.

So, you know, from our standpoint, we -- you know, like I said it's been a work in progress. We have been very flexible reaching out to the neighborhood and getting their input, making sure people are comfortable with the design and -- not so much the design, but also, you know, the
So I don't know if you want me to highlight anything specific, but that's kind of been what we've done over the last two to three weeks.

SHIPPEN PAGE: No, I think that's very helpful, Shahid. I think that the neighbors will speak for themselves, of course, but I certainly wanted to reassure the Board that we are not indifferent to the neighbor's concerns, and have gone to some length to make sure that while it may not be perfect, it is also more in line with addressing their concerns.

So I'll close our part now, Mr. Chairman, reserving any opportunity to --

CONSTANTINE ALEXANDER: Mr. Page, I'd like to see you address the statute. To get the special permit you're requesting, you have to deal with -- in Section 10.43 -- various items, and you haven't identified those.

SHIPPEN PAGE: Well --

CONSTANTINE ALEXANDER: Just to complete the record.

SHIPPEN PAGE: Oh, I'm sorry, Mr. Chairman. But if I may just quote one section from this Bellalta case for
the record, it reads this: [Bear with me for just a moment.]

CONSTANTINE ALEXANDER: Sure.

SHIPPEN PAGE: "A municipality's bylaw may not afford fewer protections to preexisting, nonconforming structures or uses than does the governing statute." And that is as interpreted by the Supreme Judicial Court.

I want that to be in the record, because I certainly want to spare my client an appeal from a Board's decision that’s based on an ordinance that clearly does not comply with the interpretation afforded by the Supreme Court in Bellalta. And that's the nub of the question.

I'll be very happy to read into the record the requirements for the special permit, because I understand those are legal elements, but I do want to emphasize the overarching view that all of us appreciate.

So with that being said, Mr. Chairman, let me go and read into the record. So the requirements of the ordinance can or will be met, but this is a proposed addition to a single-family residence that was built in 1913, and acquired by the applicants in 2015. It's preexisting and nonconforming because the lot is undersized by 237 square feet, and the left yard setback is 4.2 feet,
where 10 feet are required.

The scope of the work will increase the FAR from existing 0.32 and proposed 0.53, thus exceeding the allowed FAR by 0.003 -- .03.

The use will continue to be as a single-family residence by this family with two young children, modernizing the dwelling to modern standards will benefit the neighborhood and will not be to the detriment of the public interest.

Traffic generated or patterns of access or egress would not cause congestion, hazard, or substantial change in established neighborhood character for the following reasons: Because the use of the dwelling will continue to be as a single-family residence, there will be no change to the extent of traffic generated, or in the patterns of access or egress. As such, there will be no congestion hazard or substantial change in the established neighborhood character.

The continued operation of or development of adjacent uses, as permitted in the zoning ordinance, would not be adversely affected by what is being proposed use, for the following reasons: Because the building -- I'm sorry,
because the use of the dwelling -- will continue to be as a single-family residence, the continued operation of or the development of adjacent uses, all of which are single-family residences, will not be adversely affected.

d) Nuisance or hazard would not be created to the detriment of the health, safety and/or welfare of the occupant of the proposed use, or the citizens of the city for the following reasons:

The proposed addition to this 1913 single-family residence will be an improvement to the neighborhood, and will not create a nuisance or hazard to the detriment of the health, safety and/or welfare of the occupant or of the proposed use to the citizens of Cambridge.

For other reasons, the proposed use will not impair the integrity of the district or adjoining district, or otherwise derogate the intent or purpose of this ordinance for the following reasons:

As stated previously, this is an upgrade to a 1913 single-family dwelling that advances the interest of the city and having a strong stock of residential dwellings, and thus this proposal would not impair the integrity of the district or adjoining district, and otherwise derogate from
the intent or purpose of the ordinance.

Thank you, Mr. Chairman.

CONSTANTINE ALEXANDER: Thank you. And now the case that you've referred to -- and I'm familiar with, but it's been a while since I've read it -- that says the provisions of the case, in effect the provisions of the Cambridge zoning ordinance are not consistent with state law.

As I recall, that was a standard that the SJC said would have to be satisfied. What was that -- just briefly, what's it that standard?

SHIPPEN PAGE: Sure.

CONSTANTINE ALEXANDER: And how do you satisfy it?

SHAHID AZIM: Sure. As I wrote in the letter, the standard is 1) does what you do intensify the nonconformity of the nonconforming dwelling? Preexisting nonconforming dwelling? If it does not, as my friend Mr. Rafferty has pointed out, the applicant is entitled to a building permit.

If, however, it results in a -- intensification of the nonconformity, or results in a new nonconformity, the question before the Board becomes, would this be a substantial detriment to the neighborhood?
What constitutes a substantial detriment to the neighborhood? Well, this is where the law and the facts are clearly up to a good deal of discretion.

And so, this is where it's a double-edged sword, it seems to me. It gives the applicant a lower standard, it's not as -- it's not a hardship, as you rightly pointed out earlier -- but by the same token, it gives the Board some discretion, not unlimited, but some discretion in determining what constitutes a--quote, unquote--"substantial detriment."

CONSTANTINE ALEXANDER: Thank you. We'll hear if the neighbors who are in opposition who are on the call, we'll shortly hear from them as to why they think, or why we should find that there is a substantial detriment, which you've presented the case well as to why there is not a substantial detriment resulting from the relief being sought.

SHIPPEN PAGE: If I may, Mr. Chairman, add one more comment?

CONSTANTINE ALEXANDER: Go ahead, I'm sorry.

SHIPPEN PAGE: I mean, in all the cases over the years that I've listened to and participated in before the
Board, the question of design often comes up. And the Board is clear that the design per se, up to a point, is not within the jurisdiction of the Board.

But I've listened to many cases where the design is not at all favored by the neighbors, and the Board takes those into consideration.

So that's something which I think we need to consider very carefully as we review this case.

CONSTANTINE ALEXANDER: Your point is well taken and it is correct. We are not an architectural review board, we're a zoning board. And we apply the zoning laws of the City of Cambridge and of the Commonwealth of Massachusetts. And we do not get -- we should not get involved in architectural design questions. That is --

SHIPPEN PAGE: Thank you.

CONSTANTINE ALEXANDER: -- your point's well taken.

SHIPPEN PAGE: Thank you.

CONSTANTINE ALEXANDER: Okay, questions for members of the Board at this point? Brendan?

BRENDAN SULLIVAN: Brendan Sullivan, I don't have any questions at this point, but I will sort of disagree I
think with Mr. Page's analysis of the vehicle that you have to come under. Shippen, you're claiming protection to grant -- to obtain a special permit under 8.222 c), I assume?

SHIPPEN PAGE: Mm-hm.

BRENDAN SULLIVAN: And the case that you had cited is whether or not a continuing nonconformity, an expansion of an existing nonconformity, is more detrimental? I also think if you read that, it also says provided it does not create any new nonconformities. And yet you're creating new nonconformities.

SHIPPEN PAGE: Well, I'm --

BRENDAN SULLIVAN: And under -- and so, if you're asking for protection under 8.22 c), it clearly states that you can get a special permit with the proviso that it does not increase the volume by more than 25 percent, which this is --

SHIPPEN PAGE: Correct.

BRENDAN SULLIVAN: -- and that you're also not creating any new nonconformities --

SHIPPEN PAGE: Right.

BRENDAN SULLIVAN: -- which, in fact, you are.

SHIPPEN PAGE: That's --
BRENDAN SULLIVAN: So.

SHIPPEN PAGE: -- so Mr. Sullivan, I take your PO intake, and I think the problem is that because the city's not codified, the reasoning or the language of this case that I'm forced to come before you as I did on Follen Street, with the same predicament.

I've got to find a vehicle to find jurisdiction for this case, and yet the ordinance does not provide me with an accurate portal under existing case law, which defines what the city can do.

So that's where I certainly understand your point.

BRENDAN SULLIVAN: I'm just having a clear reading of the language, that's all. So -- again, and I will defer back to what the Chair said, the opening remarks about that it may very well not be the last step here, which, if it's not, it's really going to delay your project substantially, I would think.

But anyhow, so that's my comment at this point. I'll let other members of the Board chime in or not, and I'll listen.

SHIPPEN PAGE: Thank you.

CONSTANTINE ALEXANDER: Thank you, Brendan.
Laura, do you have any questions or comments?

LAURA WERNICK: Not at this time, no.

CONSTANTINE ALEXANDER: Okay. Jim?

JIM MONTEVERDE: This is Jim. No, I don't have any additional questions.

CONSTANTINE ALEXANDER: And Andrea?

ANDREA HICKEY: Yeah. So I'm struggling a bit with our authority to sort of lean on the Bellalta case more than on the ordinance as written. That's my struggle, Attorney Page.

SHIPPEN PAGE: All right.

ANDREA HICKEY: Can you talk me through why Bellalta should be what we focus on, when the ordinance perhaps doesn't allow us to do that?

CONSTANTINE ALEXANDER: That's the point I've been trying to make as well, Andrea. I agree.

SHIPPEN PAGE: Attorney Hickey, as -- I don't mean to be histrionic, but I'm going to make a very extreme analogy to make a point.

Brown versus Board of Education was decided by the United States Supreme Court, and a black family takes their child to school and the school says, "You're not allowed."
And they say, "But the Supreme Court of the United States says what you're doing is not legal." And they say, "Well, look, we have to follow our rules."

And the child says, "But you're depriving me of rights that I've been given by the United States Supreme Court." And I have to question two years nearly since this case was handed down. The city has not even raised this as an issue.

And I've called the City Manager to ask him because I understand the Law Department won't speak to me, but I find it very puzzling that I'm trying to figure out how to get simple relief, and it's very clear from the Bellalta case that one in two family dwellings are handled very differently from other structures -- a destination with the Cambridge zoning ordinance does not make.

And so, that I'm required to conform to a statute what has now been overruled, in as much as it applies to my case. And if I am told that I've got to apply for a variance, which the Chairman rightly points out, this does not constitute a hardship. This is a modest increase in the FAR.

If I'm forced -- if you deny this, and I'm forced
to appeal this, it puts my client at a decided disadvantage. The irony is that my client could build this if we took away the 177 square feet, he could build this as of right. All he's asking for is the city's permission under the applicable case law to build an addition which is simply appropriate to this property, irrespective of the neighbor's concerns about designs. It is what the property can hold.

So I am certainly willing, Attorney Hickey, to -- I'll try to persuade you, but we can all see the dilemma in what I'm trying to explain, and I don't have a rabbit that I can pull out of a hat, all I'm looking for is to explain that this is a very awkward position for myself and any other applicant that comes before the Board that says, "We got a parallel universe here."

CONSTANTINE ALEXANDER: And it's an awkward position for this Board as well, which is the point I've been trying to make.

SHIPPEN PAGE: Yeah.

CONSTANTINE ALEXANDER: And the City hasn't helped us out with regard to dealing with their ordinance as compared to the court decision you referred to. But, you know, we're going to go back to the point. You could just
reduce the size of this project by 177 feet, and the issues
would be over. I mean, it's your call, and I'm not
suggesting you have to do that.

SHIPPEN PAGE: That is --

CONSTANTINE ALEXANDER: But that --

SHIPPEN PAGE: -- that is true, Mr. Chairman, but
if I can just propose a hypothetical to you for the purposes
of argument, if I were to say to you that if you will be
overturned on appeal -- I don't mean this to be in an
argumentative sense, but I think the Board would be
definitely overturned on appeal; I can't even predict what a
court's going to do, no lawyer could ever do so.

But if the governing law is as I suggest, and the
city is forced to go on appeal and loses, it's a waste of
city resources, and I think you'd be well within your rights
as the Chairman to say, 'I need -- " as I've heard you say
to Attorney Rafferty "-- this person is entitled to a
special permit.

And Mr. Sullivan has obviously a point in question
as to whether or not this is a new nonconformity covered by
the case, but I don't think you're at risk by saying, "We
understand that this is not just the ordinance, but the
ordinance as it has been interpreted by the highest court in Massachusetts."

BRENDAN SULLIVAN: [Brendan Sullivan.] Andrea, you still have the floor. Do you have any more questions?

ANDREA HICKEY: So I'd like to go back to Attorney Page just for a second to perhaps speak to Mr. Sullivan's concerns. Attorney Page, can you talk a little bit about your view of this project as sort of a perhaps increase of an existing nonconformity is what's being presented, versus a new nonconformity? Because I think that distinction is really important.

SHIPPEN PAGE: I agree with you. I think it is -- as I read this case, Attorney Hickey, I see it as allowing - a - the city has to determine whether or not there is an intensification of an existing nonconformity, which there's none; we were not going further into the side yard setback, whatever, or a new nonconformity.

If there's a new nonconformity, I think this is the spirit of this case that says you've got all these properties throughout Massachusetts, all of whom were built, or many of which were built before zoning even came into being.
And to force a homeowner to justify an addition under the guise of a hardship -- and I've watched this Board over many, many years deal with that very complicated issue -- they are saying, "We're going to have a lesser standard that's going to apply to these."

And the Board's judgment is going to be whether or not this whatever it is constitutes a substantial -- not any detriment, a substantial detriment to the community, giving the leeway to the homeowner to do things that in the Board's judgment are reasonable, that aren't just crazy like these houses in Gloucester that are -- you know, these McMansions that are being built -- but something that is within the purview of the community; people who had constituted jury, as you guys do, to say, "This makes sense."

Now, the Chairman has indicated it's too big. And that's a judgment call, which I respect. But it does fall within a substantial detriment, rather than a hardship. I'm not arguing hardship here, this isn't that case. So that's how I'd address your concern.

ANDREA HICKEY: Thank you, Councillor. I'll yield to Mr. Sullivan or whoever is next.

SHIPPEN PAGE: Thank you.
CONSTANTINE ALEXANDER: Just a slight clarification, Mr. Page. The special permit requirement is a substantial change in established neighborhood character. And the question, I guess, for the purpose of the special permit putting aside this complication of the Supreme Court decision in the lack of response by the City of Cambridge in its ordinance is whether you -- whether for purposes of a special permit what is being proposed will constitute a substantial change in established neighborhood character.

SHIPPEN PAGE: Right, so.

SAM KACHMAR: Mr. --

SHIPPEN PAGE: Okay, let me address that, Sam, and then I'll cede the floor to you. I think, Mr. Chairman, this is a really interesting questioning for the city of Cambridge. If I were to say, "What constitutes the neighborhood?"

I would look at Strawberry Hill, I'd look at Grozier Road, I'd look at not just the six or seven houses around this particular section, I'd look at where the old Russell School, where those buildings were put up, and I'd see that there was some considerable imagination and
diversity in architectural styles that have sprung up in the
last 30 years, as design changes, as tastes have changed,
the diversity of the population has changed.

So I think that one has to weigh what constitutes
the neighborhood, and I would suggest that one might be more
than just the surrounding houses. I'm sorry Sam, go ahead.

SAM KACHMAR: No, I was going to say that, you
know, we reviewed a lot of the homes on Larch Road and tried
to consider how some are contemporary, some were traditional
and some were mixed in between as we worked through the
design for our client.

And if I may just make a quick comment, we were
actually inspired by a lot of beautiful new homes in the
neighborhood. So the argument that we're the only ones who
want to build or sort of remodel the house I think is a
little bit of a moot point.

We only have to walk not only down our street, but
sort of -- you know, any of the side streets in the Huron
Village sort of area, you're going to find multiple homes
that have been updated and are no different than what we're
proposing.

So from the existing homeowner's standpoint, we
I feel a little perplexed, frankly, that we not only have changed our plans -- our original plans that were proposed a few weeks ago, we've been extremely flexible.

We want to absolutely be respectful of the neighborhood. You know, I've been in Cambridge for 20 years -- five on this street. So we're lifers for Cambridge.

And so, what I want to understand is really we want to absolutely do the right thing. But to me I'm a little perplexed. I think it's -- in many ways this is a very simple decision. We can make it complex, but it can be very simple.

I think Shippen has rightly pointed out that there is a -- you know, there are certain bylaws that we're compliant with, and so from my standpoint, you know, we proposed something that is very much in the spirit of the neighborhood.

CONSTANTINE ALEXANDER: Thank you. I'll now open the matter up to public --

BRENDAN SULLIVAN: Did Jim chime in?

CONSTANTINE ALEXANDER: I'm sorry?

BRENDAN SULLIVAN: Did Jim Monteverde chime in?

CONSTANTINE ALEXANDER: He didn't really comment.
BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: Jim, am I correct, that you had no comments?

JIM MONTEVERDE: That's correct.

CONSTANTINE ALEXANDER: No questions?

JIM MONTEVERDE: No, that's correct. Thank you.

CONSTANTINE ALEXANDER: Okay. I'm looking for my instructions. Okay. So as I said, we're going to open this matter up to public testimony. Any member of the public who wishes to speak should now click the icon at the bottom of your Zoom screen that says, "Raise hand."

If you're calling in by phone, you can raise your hand by pressing *9 and unmute or mute by pressing *6. So with that, we'll take a few moments to see if anyone wishes to speak. We have four -- several people who wish to speak. Go ahead.

COLIN MORGAN: Can you hear me?

SISIA DAGLIAN: Coral intake? Yes.

COLIN MORGAN: Hi, my name is Colin Morgan. I'm an abutter at 67 Larch Road, right across the street, speaking on behalf of myself and my mother, Dr. Alison (phonetic) Morgan, who is also an abutter.
I have a number of concerns, but I just wanted to correct a few things you said, Mr. Page. To begin with, the house had work done in the past 100 years. It's an incorrect date. I don't know where you got that information.

We were close friends with the last people that lived there, and having lived there my whole life, I'd seen work on the outside of that house happen, even before these close friends of mine lived there. So that's one thing I just wanted to clear up real quick.

And then something else I wanted to clear up, my mother and I, we live right across the street. She works on a very fixed schedule. She's a neurologist, the only neurologist at one of the main COVID centers in Boston. So she comes and goes pretty -- you know, you can see when she's coming and going. We haven't been contacted by you. No one's contacted us. We've had to get this information from other neighbors, and we're your direct neighbor across the street.

We would have really appreciated it if you had reached out to us, and it would have made us feel like you were doing this more in the spirit of the neighborhood, like
you were talking about in the design just now. And just to
get to that real quick, I agree.

I think this should be -- this can be a very
simple matter; just reduce the size by the 177 feet as you
were talking about, and we won't have to waste any more of
your money, Mr. Page; we won't have to waste any more of
this Board's time, and of the Council's time, and we won't
have to waste any of our time.

We're talking about two children; we're not
talking about a five or six children household. People have
lived there in the past 100 years who have had many more
than two children. But the last people that lived there had
three children that are close friends of ours, as I said.

The person who lived there before this was an
architect as well. So, you know, if need be, the Council
can get that information from her.

And the last thing I'd just like to say -- and I'd
like to say I appreciate your time as well -- on a personal
note, when I was a child, you might be familiar with
Migdalia Y. Penalvert Square, the little girl who died on
the corner of Fresh Pond Parkway and Huron Ave right down
the street from Larch Road up there.
SHIPPEN PAGE: Certainly do.

COLIN MORGAN: That was a very sad day for the neighborhood. I asked you in this meeting last time to come to us and to ask the City of Cambridge to ask the proper people if this was going to impact traffic on either Larch Road or Fresh Pond Parkway. You've done none of that.

I asked you last time to come to us with a plan for rodent control. As you know, the City of Cambridge has a big rodent problem. When construction occurs, they tend to scatter around the neighborhood. You said you would come to me with a plan for rodent control; you have not.

I just feel there are a number of smaller issues you need to look at before you even get to the fact that those other houses you were talking about in Cambridge that have a similar modern design; they fit in the FAR. That's why they're there, that's why it's okay.

So, you know, if you want to just reduce the size and go ahead and do that, I think it would just make it a lot easier for all of us, and I appreciate everyone's time. Have a nice day and stay healthy in COVID.

SHAHID AZIM: If I may just quickly --

CONSTANTINE ALEXANDER: No, sir, sir, it's not
your time to speak. I want to hear from the other neighbors. You'll have at the end time to speak; I don't want to break up the dialogue. Sisia, who's next?

SISIA DAGLIAN: Kate Clearly?

KATE CLEARY: Hi, I live at 83 Larch Road, and I just saw the plans probably about 10 minutes before. I too have not been contacted, and I am an abutter.

I went on the website on Tuesday to find out, and I actually e-mailed Maria to find out when the plans were supposed to be in. And I just saw them probably 10 minutes before the meeting started. So that doesn't give me a lot of time.

I don't think that the issue necessarily is the design of the project, it's the scale of the project in proportion to the lot and the way the lot is situated. It just is massive. To Colin's point, it just needs to be smaller.

And more importantly, in the last meeting I asked about a landscape plan, which I think is an extremely important issue here, because according to those plans that we're seeing, a lot of maples are coming down, and it's my understanding that the City of Cambridge has put a stop to
taking down healthy trees, and that's a huge concern because that -- those trees protect our neighborhood, whether it's in the environment from all the traffic on Fresh Pond Parkway, our noise level --

So there's a lot of things that need to be taken into consideration here that -- you know, I asked for those landscape plans, and I'm sure people in my neighborhood are very concerned about the fact that as well.

CONSTANTINE ALEXANDER: Thank you.

KATE CLEARY: That's all I have to say.

CONSTANTINE ALEXANDER: Sisia, next person?

SISIA DAGLIAN: Robert Kegan?

ROBERT KEGAN: Can you hear me now?

CONSTANTINE ALEXANDER: Yes.

ROBERT KEGAN: Thank you, Mr. Chairman. Robert Kegan, with my wife, co-owner of 71 Larch Road, directly across the street father the Azim's property. I do appreciate the Azim's have been in contact, and I appreciate that they -- if I understand correctly, have agreed to set the wall that will be directly facing our house further back from the street, which I appreciate.

You never really know what all this is going to
feel like, of course, until something is built, despite --
you know, what you can see in architectural plans.

I appreciate that -- so my initial concern, my
main concern was that it would feel too encroaching, too
close, too monolithic, and leave our house feeling too
closed in. The setback is an improvement on that.

I also appreciate that they've begun to break up
that kind of -- that monolith by putting in some windows.
Myself, I would love to see more windows.

I have a kind of question, which is, if this is
approved, does, are they -- does it then -- are they
required, kind of, to follow the window plan or, I mean, is
that as binding so to speak to the plan as the setback
issue?

CONSTANTINE ALEXANDER: Let me answer that
question. When we -- if -- when we approve a petition for a
change to a structure, we qualify that approval by saying
that the project has to proceed in accordance with the plans
that were filed with the petition.

And it sometimes happen the petitioner decides, or
his architect or a builder, they want to or need to make
some changes to what they presented to us. We have to have
another hearing with the new proposal.

So it's not a matter of -- tonight we will, if we approve it, it'll be based on the plans that have been submitted. And those plans are it, unless the petitioner comes back and seeks different relief or new relief, based upon new plans.

ROBERT KEGAN: Thank you. Thank you, Mr. Chairman.

CONSTANTINE ALEXANDER: Okay. Anybody else?

SISIA DAGLIAN: John Hawkinson?

JOHN HAWKINSON: Hi Mr. Chair, [John Hawkinson.] I just wanted to make sure that you and Attorney Page were aware, because it sounded like you were not, that the Law Department has in fact proposed a codification of the Bellalta case of the Cambridge zoning ordinance, and that appeared on the City Council agenda this past Monday.

And I don't mean to suggest that that language is in effect now, and it may not be the language that Ranjit considers exactly when he considers these questions, but it might be helpful to you in thinking through what might happen and recognizing that although it's certainly not a certainty that the Council will adopt the proposed language
from the Law Department, it's fairly likely. So if this case were to instead have been heard in April or May of this year, it would be pretty clear what the standards were.

And so it might be helpful to think about potentially applying the standard that the Law Department has recommended. Thanks.

CONSTANTINE ALEXANDER: Thank you, John. I was not aware of that, and thinking only for myself, I don't think -- it's nice, it's helpful to know that they're changing the standard, but we've got to deal with the standard that's in the ordinance right now, anyway -- in the ordinance, and we also have to deal with the court decision that Mr. Page correctly has referred to.

But thank you again. Anybody else?

SISIA DAGLIAN: Yeah. A phone number ending, 4248.

JOHN RIELY: Yes, hello. My name is John Riely. I'm from 77 Larch Road, and I'm here with my wife, Dr. Margaret Gayden. Can you hear me?

SISIA DAGLIAN: Yes.

JOHN RIELY: Okay, thank you. So recently we were asked to write a letter about our comments pertaining to
this special permit, which we did. And in the letter, we highlighted some of the concerns that we had, similar to some of our neighbors who spoke tonight -- namely our nearby neighbors Kate Cleary and Bob Kegan.

Mainly we were concerned about the monolithic wall and its proximity to the street sidewalk and since that's been changed -- you know, our letter addressed that. And so, we feel more comfortable with it that it's within the setback rules.

Also that it does have windows on that first floor of the wall, and it seems a little bit more in keeping with the rest of the neighborhood, and seems less like a -- sort of like a side wall, when it really fronts the street.

So those are two of the concerns that we felt have been addressed by the changes by the applicant.

I think with our neighbors in general, this part of the street has been a very close community. We go to people's Christmas parties, we go to ball games together, we have barbecues, and this case really is upsetting, because it sort of breaks that spirit ideal.

I really feel bad about this in that way, because the house and it's design in the presentation of this seemed
to be very offensive. And I think a lot of people felt that way.

But in terms of how this is in -- I guess the application of this -- I feel with some of my neighbors, I do feel for them and I want to support them in the fact that if the house seems too large for them, they're closer to that house than I am, because they would front that addition and I wouldn't. So I'm concerned about that.

And I did ask the applicant to address that. I asked that we have a plan for what the landscaping would look like to better define that side of their addition, and also, add some definition so it would break up that wall even further.

What they said was that it would come. And I am concerned about that. I feel that we should know better about what we should expect there, and I'm in support of my neighbor's comments in reference to that.

In reference to Colin's earlier comment with his Mom about the size of the house, you know, I can understand that there's a concern there, and that's something I think the Board addresses better than the neighbors. I think we can add our comments about that one, but I think that you
know what the law is, and I think that you need to pursue that.

My wife may have other comments. Can she talk too?

CONSTANTINE ALEXANDER: Thank you.

SISIA DAGLIAN: No, his wife wants to talk.

CONSTANTINE ALEXANDER: Oh, okay.

SISIA DAGLIAN: Yes.

CONSTANTINE ALEXANDER: Go ahead.

MARGARET GAYDEN: Yes, I just -- in support of John -- what John said, as well as Bob Kegan, Colin Morgan and Kate Cleary. I really have to take issue with a couple of items that Mr. Page stated.

Number 1, the houses that are in the middle of the street are there because the school used to be there, and they were brought in as a cluster. They all are somewhat modern, but not nearly as jarring or fortress like as this particular one.

They blend in from a color perspective, with -- and a landscaping perspective -- with the rest of the street, and they're a very distinct -- I don't know anybody, they're -- I do not agree. Of course Mr. Page would say
that the neighborhood is larger, that's his argument, he's an attorney, who's much more skilled with language than am I.

Nevertheless, our neighborhood and one of the comfortable feelings of living where we are is that there are five or six houses that have a very warm, historical sense, and that's where we live. And no, we're not happy to see this new modern looking, fortress-like structure.

If -- we do see that it would be a substantial detriment to the neighborhood, and we do -- our concern is that it will decrease the value of our houses. So I really take issue with those two points, Mr. Page, and I want that noted in the record.

I also want to support what Kate said about the trees. Those 100-year-old sugar maples, and they add beauty in the fall, and there is a moratorium on taking down healthy trees.

So I can't see how those can be taken down, and I don't see how you could put that addition and not take them down. So I think that needs to be taken into consideration. Thank you very much for your time.

CONSTANTINE ALEXANDER: And thank you for taking
the time to participate. Anyone else? Yes?

SISIA DAGLIAN: Yes. Phone number ending 9213.

[You don't have to cut the trees.]

Hello? Can everyone hear me?

SISIA DAGLIAN: Yes.

CONSTANTINE ALEXANDER: Yes.

ALISON MORGAN: This is Alison Morgan. I live
across the street from I live across the street from the
house we're discussing today.

CONSTANTINE ALEXANDER: How many people -- excuse
me, how many people live across the street? You're about
the third or fourth person who said they live across the
street. I'm sorry, that's -- go ahead.

ALISON MORGAN: Who's questioning where I'm -- who
was the person who said that, I'm sorry? Hello?

CONSTANTINE ALEXANDER: Hello?

ALISON MORGAN: Yes, the person who made the
comment about me living across the street, I am the person
who lives across the street.

CONSTANTINE ALEXANDER: Okay, I should have bit my
tongue. Proceed with what you want to say, let's forget
about who lives across the street and who doesn't.
ALISON MORGAN: Well, I live at 67 Larch Road.

CONSTANTINE ALEXANDER: Okay, thank you.

ALISON MORGAN: My son talked earlier. My name is Alison Morgan, and I've lived here for 27 years. I want to talk about everything that everyone has said, but of course there's not enough time.

I want to thank my other neighbors for being so kind to me for what has been going on. I haven't had the chance, as you guys know, to be -- you know, involved, because of the situation of the pandemic.

I was only alerted to this new proposal, this restructuring of the architectural plans, by -- I happened to be on my computer on the Internet and it popped up, and it had only been there -- put there on Monday. I don't have enough time to go over those. I think in my circumstance being right across the street from this house, I need more time to -- and I said this in my letter that I sent to the Board, I hope it was received: I need more time, I need to talk with an architect, talk with a lawyer regarding what's happening.

I am the one who will be most impacted in this whole scenario, and I will ask the Zoning Board to please
give me time to seek the help that I need to decide on how
to proceed with this.

And it's just been quite a shock. The house is
very large. I'm going to ask, was the basement taken into
account -- I did write this in my letter -- when the square
footage of the house was calculated? Hello?

CONSTANTINE ALEXANDER: Hello? Yes. Do you want
--

ALISON MORGAN: It was?

CONSTANTINE ALEXANDER: Is that a question to the
petitioner?

ALISON HAMMER: I'm asking whether -- I don't know
-- I'm asking whether the basement has been taken into
account when all of this was calculated, because --

CONSTANTINE ALEXANDER: I don't know the answer.

ALISON MORGAN: -- as I said in my letter --

CONSTANTINE ALEXANDER: I don't know the answer to
that, but I'm not sure the answer is relevant to the case
tonight. The city --

ALISON MORGAN: Well, you were saying that the --
wait a minute, they were saying that they needed more room.
So I'm asking if that was considered. Because if the
basement has been completely done -- I wrote this in my letter -- I mean, the basement has completely, an au pair suite and a lot of useable space.

So I'm just asking, the idea behind making this house bigger is hardship or whatever you want to say, the people need more room. So I'm asking whether this is not considered part of it? It's a question.

CONSTANTINE ALEXANDER: All I can say is that whether the basement is finished or not or useable is not germane to the question we have to decide tonight. They say --

ALISON HAMMER: Okay.

CONSTANTINE ALEXANDER: -- they believe they need more space, and -- but that raises some zoning issues, which is what we're trying to hash out tonight. So I don't want to go down that road, it's just not, frankly, relevant to what the legal issues we have to decide.

ALISON HAMMER: Well, it was discussed earlier, that's the only reason I'm bringing it up.

And also, the size of the house is of concern, and I do have concerns regarding light -- how it will affect light and noise. As I said in my letter, I am not an
architect, so I don't really know how it would affect it, and I would need to have the time to discuss with someone all of these issues.

Let's see, what else? Change in established neighborhood character, this was brought up tonight, and I think it's very important that -- and I agree with Margaret, and thank you for bringing up that point -- we need to have this house be fitting in with the rest of the neighborhood. It's sticking out like a sore thumb if the proposed architectural style and design is allowed. And I think it is important.

And so, I would prefer that, you know, somehow, it's modified, made smaller, and also, somehow or the other the style is made more in keeping with the neighborhood.

I'm really quite concerned about how much it's going to take, you know, the time -- length of time, the duration of this project.

ALISON MORGAN: Hello?

CONSTANTINE ALEXANDER: Hello? You said -- I thought you made a comment, I'm sorry.

CONSTANTINE ALEXANDER: No. No, I was talking to my -- one of my fellow Board members. I'm sorry, I didn't
ALISON MORGAN: Okay.

CONSTANTINE ALEXANDER: -- mean to interrupt you. Go ahead, continue.

ALISON MORGAN: Alright. And so, basically, I want to support what the rest of the neighbors have said, and I want to state that the impact on my property and my property value, and also, the encroachment, as Bob has said, the feeling of claustrophobia where this house -- such a size of house would project upon my house and needs is of concern.

So I don't want to waste a lot of time, because I'm sure we have a lot of neighbors waiting to speak. But that would be my two cents there.

And again, to reiterate, I hope you received my letter, because the details are in there, which I wouldn't have time to state tonight. Thank you.

CONSTANTINE ALEXANDER: Thank you for taking the time to speak. Anyone else, Sisia? If that's it's, we're going to close public testimony. I will give -- Mr. Page, I'll give you and your client the opportunity to give final remarks before we hear the case. But let me make a personal
observation. You obviously have neighborhood opposition. And the opposition is tied to the fact that it's too big, in the neighbors' opinion, too big.

And because it's too big, you need zoning relief. If you would just cut the size of the addition back a bit, you could avoid the need to get any legal relief, and I suspect you would make amends with your neighbors, who are not going to be happy, should we grant the relief you're seeking, and should you build -- make the changes that you're proposing.

It's just a practical answer. And I wish you would consider that. It would make life easier for you, in my opinion, and all around for the city. With that --

SHIPPEN PAGE: Mr. Chairman --

CONSTANTINE ALEXANDER: Mr. Page?

SHIPPEN PAGE: I certainly appreciate your practicality; I've listened to the neighbors with clearly some serious attention. I understand my clients want to be in this neighborhood for a good long time, and they, of course -- my assumption is they don't want to put their finger in a hornet's nest.

If I were at the Senior Center, I'd ask for a
brief recess so I could talk about it with them, because
they could either go for a vote and possibly given the tenor
of the neighbors and the composition of the Board, I
wouldn't want to predict, because I wouldn't want to put my
foot in my mouth, but I would make sure that --

So if I can go on mute for two minutes, call my
client and see what they want to do, I'd appreciate it.
Because I -- they may want to withdraw. They may say, "No,
this is not worth it." Or they may say, "We'll take a shot."
But I've heard the same things everybody else has heard, and
this is why you all get paid the big dollars." So --

CONSTANTINE ALEXANDER: I was being happy to
recess this case. Let me explain. We have a -- next case
is a case we're going to continue, because the person didn't
post the sign. So it's not going to take very long to deal
with that case.

SHIPPEN PAGE: Okay.

CONSTANTINE ALEXANDER: And then the last case is
2072 Massachusetts Avenue --

SHIPPEN PAGE: No, no, no.

CONSTANTINE ALEXANDER: That case is not going to
go on for a long time, in my opinion, but I'll probably be
dead wrong, and the reason for that is the case is going to be continued.

But, with that I will recess this case, get on the phone with your client, when you're ready to speak with us, come back on and hopefully by that time we'll have time to hear what you want to say.

SHIPPEN PAGE: This won't take long, Mr. Chairman, thanks for that indulgence.

CONSTANTINE ALEXANDER: All right. We'll do the next case. Check back in with us. If you're not ready, then we're going to go on to the 2072 Massachusetts Avenue, which I hope and believe will not be -- take a long time to deal with.

SHIPPEN PAGE: Thank you very much.

CONSTANTINE ALEXANDER: Okay. So we're going to recess this case, and I'm going to move on to the next case. Okay?

SHIPPEN PAGE: Yes, thank you.

COLLECTIVE: Thank you.
(7:21 p.m.)

Sitting Members: Constantine Alexander, Brendan Sullivan, Jim Monteverde, Laura Wernick, and Jason Marshall

CONSTANTINE ALEXANDER: The Chair will now call Case Number 98136 -- 9 Shady Hill Square. Anyone here wishing to be heard on this matter?

SISIA DAGLIAN: No.

CONSTANTINE ALEXANDER: No?

SISIA DAGLIAN: [I don't see.]

CONSTANTINE ALEXANDER: The petitioner -- no one's going to speak tonight. This is a case we're going to have to continue. The petitioner failed to post a sign advertising this case tonight, and as a result we can't hear the case.

We did this once before, but that failure to participate was understandable, because the case wasn't going to come up until close to midnight because of the next case we're going to hear tonight.

So, I don't think we need --

SISIA DAGLIAN: They wanted -- it hasn't been
heard, but they wanted to get January 28.

CONSTANTINE ALEXANDER: When do we have room?

Next? Keeping him on, we need at least two weeks for him, for the petitioner to advertise.

SISIA DAGLIAN: Yeah, the twenty-eighth.

CONSTANTINE ALEXANDER: Twenty-eighth?

SISIA DAGLIAN: Yeah.

CONSTANTINE ALEXANDER: That gives -- today is the

--

BRENDAN SULLIVAN: Seventh?

CONSTANTINE ALEXANDER: -- seventh --

SISIA DAGLIAN: Yeah.

CONSTANTINE ALEXANDER: -- yeah, that's plenty of time. Okay. The Chair moves that we continue this case as a case not heard until 6:00 p.m. on February 28.

SISIA DAGLIAN: No, January.

CONSTANTINE ALEXANDER: I'm sorry, January, thank you. January 28, subject to the following conditions:

One, that the petitioner signs a waiver of time for decision.

SISIA DAGLIAN: They've already done that.

CONSTANTINE ALEXANDER: And that has already been
done, so that condition has been satisfied.

Two, that the petitioner this time has to post a sign advertising the new time, the twenty-eighth of January, and the new 6:00 p.m., and the time and date, 6:00 p.m. on the twenty-eighth of January.

And that the sign must be maintained for the 14 days prior to the twenty-eights, as required by our ordinance.

And lastly, to the extent that the petitioner wishes with regard to the case we'll hear on the twenty-eight, make any changes or additions to the plans, specifications or the like with regard to this case, the petitioner must have these in our -- or the Building Department's files, no later than 5:00 p.m. on the Monday before the twenty-eighth.

All those in favor? Brendan?

BRENDAN SULLIVAN: Brendan Sullivan, yes to the continuance.

CONSTANTINE ALEXANDER: Okay. Jim?

JIM MONTEVERDE: Jim Monteverde, yes to the continuance.

CONSTANTINE ALEXANDER: Laura?
LAURA WERNICK: Laura Wernick, yes to the continuance.

CONSTANTINE ALEXANDER: And Andrea?

ANDREA HICKEY: Andrea Hickey, yes to the continuance.

CONSTANTINE ALEXANDER: And the Chair votes yes for the continuance as well.

[All vote YES]

So this case will be continued until 6:00 p.m. on January 28, provided that the conditions that I've just dictated are satisfied.

Okay. Have we heard back from --

SISIA DAGLIAN: Well, we have to unmute them, see what they say.

CONSTANTINE ALEXANDER: All right, I'm going to move on to the next case, then. They'll have to wait until we finish.

SISIA DAGLIAN: Do you want to unmute them and ask?

CONSTANTINE ALEXANDER: Say it again

SISIA DAGLIAN: We can unmute them and ask. I can unmute them and ask?
CONSTANTINE ALEXANDER: Yeah, please do that.

SISIA DAGLIAN: Shippen?

SHIPPEN PAGE: Sisia, hi.

SISIA DAGLIAN: Yeah, do you -- are you ready, or do you want to wait until --

SHIPPEN PAGE: I can't reach Sam Kachmar. I've tried to reach -- my clients are available, but I haven't reached Sam. And so, I think, you know, I can certainly hang in there during the 27 too, but -- and I can come back. But I think it's going to take a little bit more processing than 30 seconds, so I don't want to hold up the Board.

CONSTANTINE ALEXANDER: Well we have another case, the 2072 Massachusetts Avenue. I'm hopeful it's not going to take a very long time, because it's an -- they're going to make a motion to continue. I can check back with you after we finish that case, and then we can make our final decision. Is that all right with you, Mr. Page?

SISIA DAGLIAN: Oops, I moved him out. Sorry.

CONSTANTINE ALEXANDER: Mr. Page?

SISIA DAGLIAN: I moved him. I moved him out.

Sorry.

BRENDAN SULLIVAN: He'll call back when he's
1 ready.

CONSTANTINE ALEXANDER: Yeah, he'll call back.

Okay, let's move on to the next case. Where's the file?

SISIA DAGLIAN: Shippen? Yeah, it's here.

CONSTANTINE ALEXANDER: There might be the letter requesting we continue.

SHIPPEN PAGE: Sisia?

SISIA DAGLIAN: Yeah, Shippen?

SHIPPEN PAGE: Yeah, yeah, yeah.

SISIA DAGLIAN: So we're -- are you there?

SHIPPEN PAGE: Sisia, are you there? Hi, Mr. Chairman?

CONSTANTINE ALEXANDER: I can barely hear you, Mr. Page.

SHIPPEN PAGE: Hold on. Hi.

SAM KACHMAR: Are you there?

SHIPPEN PAGE: Can you hear me now?

SAM KACHMAR: Yeah, I'm here.

CONSTANTINE ALEXANDER: It's a little bit better, but it's still not great.

SHIPPEN PAGE: I've got -- Mr. Chairman, I'm sorry. I just got through to the architects and my client
but -- and they're just freaked that they're going to have to wait until the end of the affordable housing project.

But if I can come back at the end and give a report as to whether that -- and the Board's willing to indulge me, I'd prefer to have a little bit more time than just the 45 seconds, because I understand --

CONSTANTINE ALEXANDER:  No, no, that's fine. We're not trying to rush you; we're just trying to be -- make sure you know all the facts.

SHIPPEN PAGE:  No, I --

CONSTANTINE ALEXANDER:  We will call you back -- we will plug you back in after we hear -- we finish the affordable housing case on Mass Ave.

SHIPPEN PAGE:  That's fine.

CONSTANTINE ALEXANDER:  But again, I just want to warn you that it's not going to be like the last time where we'll be hearing -- I hope -- we're hearing this case for hours and hours and hours tonight. Those hours and hours and hours are going to come in the future, I think.

SHIPPEN PAGE:  I think as a citizen, I'll be watching that case in any event, but it'll give me an opportunity to review this with the architects and my
clients. Thanks, Mr. Chairman.

SHIPPEN PAGE: Thank you, Mr. Page.

SISIA DAGLIAN: Okay.

CONSTANTINE ALEXANDER: Okay, ready?

SISIA DAGLIAN: No, I'm not ready. Sorry. Okay.

I've been doing some -- Sean? Okay.
(7:29 p.m.)

Sitting Members: Constantine Alexander, Brendan Sullivan, Jim Monteverde, Laura Wernick, and Jason Marshall

CONSTANTINE ALEXANDER: The Chair will now call Case Number 017326 -- 2020, 2072 Massachusetts Avenue. Anyone here wishing to be heard on this matter?

SEAN HOPE: Yes, good evening Madam Chair and members of the Board.

CONSTANTINE ALEXANDER: Good evening, Mr. Hope.

SEAN HOPE: Yes, good evening. On behalf of CC HRE Mass Ave Tenant LLC we thank you for having us tonight. In advance of this hearing, we submitted a continuance request into the file. We also submitted an explanation for the reason for the continuance.

CONSTANTINE ALEXANDER: Yes.

SEAN HOPE: Namely, there were renderings that did not accurately depict an important part of our submission. Due to the strong public interest and the fact that this really is a -- there's public funds, we thought it was appropriate to request the continuance, so that we could
share the appropriate corrected renderings with the community.

Also, there are certain city departments that it would be appropriate, namely the Planning Board, to go and present and to allow feedback, that might also end up with the Board, as well as to make sure that this process is not rushed at all.

We looked at the BZA agenda. We also looked at the Planning Board's agenda. And so, we're requesting a date in early March that would be appropriate for the Board, and we believe that would give us enough time not only to address the community, but also to follow up with any city departments that may have comments on the proposal that we're presenting.

CONSTANTINE ALEXANDER: Okay. Thank you. What I'm going to do, given the fact that this is a very -- there's a lot notoriety to this case, I want to read into the record and for the benefit of those on the phone or on Zoom, your letter requesting -- explaining why you need or want the continuance, so everyone is on the same page. I don't want any mystery here.

So with that, I'm going to -- the letter we have
received from Mr. Hope, and which he's referred to, and he has highlighted very accurately, is as follows:

“We are writing to request a continuance for the above referenced BZA case. On January 5, 2021, we held a Zoom community meeting to present the six-story alternative proposal that we submitted to the BZA on January 24, 2021.

“At the community meeting, at least one participant challenged the depiction of the abutting Russell Apartments as being out of scale in our architects' renderings.

“After the meeting, our architect, Jason Forney from Bruner Cott Associates, reexamined his renderings and discovered that the Russell Apartments height was in fact incorrect in several of the drawings.”

[And then you have a, "Please see the attached memo from Mr. Forney that provides more information."]

“We have worked to ensure that the 2072 Mass Ave permitting process has been robust and transparent with the community. We believe that this error requires us to distribute the corrected plans and renderings to the community and city staff for us to schedule another
community meeting to solicit additional feedback prior to presenting any further plans to the BZA.

"It is of utmost importance to us that the plans we present to the community, city staff and the BZA are accurate to the best of our ability. Therefore, we believe this continuance is paramount to ensuring the permitting process's integrity is not diminished. We look forward to presenting our corrected plans to the BZA in the near future."

The only thing I would comment on that letter, there's no mention here of the Planning Board. But I think you said you're planning to go back to the Planning Board with the new plans, am I correct?

SEAN HOPE: That's correct.

CONSTANTINE ALEXANDER: Good. I think that's important, because I would like to hear -- I think this Board would like to hear from the Planning Board with regard to the current plans, which are now in process.

So, I think it's time for a motion. We have -- before I make the motion, what date do we have in March, early March?

SISIA DAGLIAN: Well, March 4 is --
CONSTANTINE ALEXANDER: It's supposed to be a day that --

SISIA DAGLIAN: Right.

CONSTANTINE ALEXANDER: -- no other case is going to be heard.

SISIA DAGLIAN: March 4 and 18 are the two dates in March, the two Thursdays in March where there are not other BZA cases.

CONSTANTINE ALEXANDER: So if we did it at the seventh of -- I mean, seven plus --

SISIA DAGLIAN: Plus four.

CONSTANTINE ALEXANDER: -- plus four, the eleventh of March?

SISIA DAGLIAN: That's another -- that's a BZA date.

CONSTANTINE ALEXANDER: That is another? Oh, I'm sorry, I got it wrong. I got it backwards.

SISIA DAGLIAN: Granted, there's probably nothing scheduled for that yet.

CONSTANTINE ALEXANDER: Right. I want to do it on a date we'd ordinarily have it. Would March 4 work for you, Mr. Hope?
SEAN HOPE: I'm looking at my calendar and my other team members. Yeah. Both will take that date.

CONSTANTINE ALEXANDER: So that's okay with you, March 4?

SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: And let me check with other Board members, because we need the same -- as you know, the same five members for that to hear the case on that date. Brendan, will you be available March 4?

BRENDAN SULLIVAN: I'm not going anywhere, unfortunately. Yes. I will be available.

CONSTANTINE ALEXANDER: I'm sorry

BRENDAN SULLIVAN: I will be available, yes.

CONSTANTINE ALEXANDER: Oh, good, you'll be available. Keep going around. Jim?

JIM MONTEVERDE: Jim Monteverde, I will be available.

CONSTANTINE ALEXANDER: Okay, Laura?

LAURA WERNICK: [Laura Wernick], I will be available.

CONSTANTINE ALEXANDER: I'm sorry?

LAURA WERNICK: I will be, yes.
CONSTANTINE ALEXANDER: Good, thank you, I'm sorry. And Andrea?

ANDREA HICKEY: Yes, I'm available, thank you.

CONSTANTINE ALEXANDER: And I'm available on the fourth as well. So we will continue this case -- I'll make a formal motion in the procedures that Mr. Hope knows better than I, actually -- to continue this case until March 4.

So, the Chair moves that this case be continued as a case heard, until 6:00 p.m. on March 4, subject to the following conditions:

One, that the petitioner sign a waiver of time for decision, and he's already done that the in connection with the case we're hearing tonight.

Second, that a new posting sign with the new date, March 4, same time, 6:00 p.m. be posted and maintained for the 14 days prior to the March 4 hearing, as required by our zoning ordinance.

And lastly, to the extent there are new or changed plans specifications, details and the like, as the petitioner has done in the past, those must be in our files no later than 5:00 p.m. on the Monday before March 4. And I would advise those members of the community who are on this
call tonight or have learned about it, that you have --
that’s when any new changes will be available. And so, you
should go to the city's website and inspect them, should you
wish to.

So, with that, all in favor? Brendan?

BRENDAN SULLIVAN: Brendan Sullivan, yes to the
continuance.

JIM MONTEVERDE: Jim Monteverde, yes to the
continuance.

CONSTANTINE ALEXANDER: Laura?

LAURA WERNICK: Laura Wernick, yes to the
continuance.

CONSTANTINE ALEXANDER: And Andrea?

ANDREA HICKEY: Andrea Hickey, yes to the
continuance.

CONSTANTINE ALEXANDER: And the Chair votes yes as
well.

[All vote YES]

CONSTANTINE ALEXANDER: So this case will be
continued until March 4 at 6:00 p.m.

BRENDAN SULLIVAN: Can I just ask one question?

CONSTANTINE ALEXANDER: Go ahead.
Brendan Sullivan: [Brendan Sullivan] Sean, you guys also have a website that the general public can follow along, is that correct? Other -- in addition to the City website?

Sean Hope: Yes.


Sean Hope: And just to --

Brendan Sullivan: Because your submits to us may very well come in on that Monday night, but it may be advisable for the citizens that they could follow along, I guess whatever -- I know that you have continuing dialogue and much more concurrent than the city one has. So any advice to the general citizenry that they could follow along on your website?

Sean Hope: Yes, and just to make the comment, we've made a practice of trying to post things when they're ready on the website, regardless of when they're due to the city. And again, for the public benefit we'll try to do that as well.

Constantine Alexander: Thank you, Mr. Hope. So, this case is continued, so the case is over for tonight, anyway.
SEAN HOPE: Thank you.

CONSTANTINE ALEXANDER: Thank you, Mr. Hope.

SHIPPEN PAGE: Okay.

CONSTANTINE ALEXANDER: Okay, before we finally adjourn, we should go back to --

SISIA DAGLIAN: Yeah, I have to switch --

CONSTANTINE ALEXANDER: -- our case with Mr. Page.
(7:40 p.m.)

Sitting Members: Constantine Alexander, Brendan Sullivan, Jim Monteverde, Laura Wernick, and Andrea Hickey

SHIPPEN PAGE: I'm here, Mr. Chairman.

CONSTANTINE ALEXANDER: Oh, you're here. Good, thank you. Do you -- are you ready, or do you need --

SHIPPEN PAGE: No, we're ready, Mr. Chairman. I think my clients are eager to put this matter to a vote of the Board, and hope that we've satisfied or at least addressed the concerns of the Board, and we certainly heard the concerns of the neighbors.

CONSTANTINE ALEXANDER: I'm sorry, I had trouble understanding what you were saying. You're not on the screen this time, and so, the sound's a little bit blurred.

SHIPPEN PAGE: Yeah, no, I went off --

CONSTANTINE ALEXANDER: Could you -- I'm sorry?

SHIPPEN PAGE: I went off the screen. I couldn't -- I'm blank now, for some reason. But in any event, my clients are eager to have the Board vote on this matter.

CONSTANTINE ALEXANDER: So you want to vote
tonight?

SISIA DAGLIAN: Then I'm going to check it out --
CONSTANTINE ALEXANDER: Is that right? We seem to have lost you. Yes.

SHIPPEN PAGE: Correct.

SISIA DAGLIAN: Now you're on mute. Shippen, you're on mute.

SHIPPEN PAGE: Sorry. Thank you. Whoever's helping me technologically, thank you.

CONSTANTINE ALEXANDER: Oh, finally you're back on the screen.

SHIPPEN PAGE: Yeah, it's good to be back. The -- my clients would like to go for a vote, and they have -- they hope they've addressed your concerns, and they've certainly heard the neighbors, and they'd like to see how the Board has received their application.

CONSTANTINE ALEXANDER: Okay, and you -- of course they appreciate that if the vote doesn't go with them? You'll have -- relief is denied, and of course there's appeal rights, and I'm going to take a long time to get the case resolved, if it gets to the courts.

SHIPPEN PAGE: Exactly, so -- and then if they --
if the Board should deny them, they would be prepared to
alter their thing, but they'd like to get this --

CONSTANTINE ALEXANDER: Got it.

SHIPPEN PAGE: -- they'd love to have this
approved, and, but they could go to the city without
prejudice if they just conformed with the zoning ordinance.
So --

CONSTANTINE ALEXANDER: Okay, that's fine.

SHIPPEN PAGE: -- this is what they'd like to do.

CONSTANTINE ALEXANDER: We -- did you have any
comments you wanted to make with regard to the neighbor's
comments that presented, or to give you a chance to deal
with this?

SHIPPEN PAGE: Yes. That's helpful.

SHAHID AZIM: If I may?

SHIPPEN PAGE: I would like to speak to that. I
would like to speak to Mr. Morgan's comments. I didn't mean
to imply that there's been no work done on that house. My
understanding was there hasn't been any additional exterior
additions to the house in my understanding. He could
clarify that for me, but that was my understanding. I don't
have the imminent knowledge that he does.
I certainly understand the tree issues, and that's something we're going to have to address.

SHAHID AZIM: Mm-hm.

SHIPPEN PAGE: I wasn't aware that I was supposed to provide him with a detailed rodent control plan, because this plan hasn't been approved, and I'm not going to go to the lengths to do that, although clearly that’s a legitimate concern.

I don't believe that the addition is going to create any more traffic from this area, and so, I certainly was a resident of this area when that child was killed at the corner of Fresh Pond Parkway and Alewife and Huron Avenue -- a disaster.

But I don't see how that’s relevant to a construction of a single-family house with the existing occupants.

With respect to how can somebody -- the family has raised five children, four children, three children, how can this -- this family has two in-laws who come for extended periods of time, both of these couples have worked from home as many of them do, and I think those work environments are going to change indefinitely in the future, and they'd like
to they'd like to be prepared for that, and I think that's it. Anything else that I've missed?

SHAHID AZIM: If I may, I can say a few words.

SHIPPEN PAGE: Please?

CONSTANTINE ALEXANDER: Go right ahead. Now, now. Not before, but now we can do it.

SHIPPEN PAGE: So firstly, thank you. I want to thank the committee for being so patient with us, and certainly the neighborhood and the neighbors. And we certainly do appreciate the neighborhood sort of barbecues and the hangouts. And we'll continue to do that. However, I think there's a few things that I would like to highlight, as I conclude.

Certainly Alison and people who are -- actually, like the Committee, I was surprised at the number of people who are neighbors tonight certainly exceeded what I had coming in to this call. But we did reach out to Alison by e-mail with the updated plans. So a little bit of correction there.

We have reached out to Bob, Margaret, who we've been very close with; Hormoz (phonetic) and Lahey who are on the other side, and they gave sort of a good letter of
reference for us.

And in -- I mean, the reason why we bought the property was actually because of these beautiful mature trees that were on the property; one of the reasons. And so, to suggest that we would take this decision lightly I think is not really appropriate.

However, I would say that we've heard the neighbors very carefully and diligently. We -- you know, from our standpoint, all we would say is that, you know, this has been very thoughtfully planned for. We hoped that the Committee gives us a fair shot, and we're -- you know, we're in this for the long haul, in the neighborhood and as well as the city.

So all I would say is, like, we are okay to have an opinion, but we're not okay to have alternate facts as far as, you know, what has been done and what hasn't been done to date in terms of reaching out to people and trying to be flexible. So I'll leave it at that.

CONSTANTINE ALEXANDER: Thank you. I will now close public testimony discussion by members of the Board, or do you want to go right to a vote? We've had a lot of -- spent a lot of time on this.
BRENDAN SULLIVAN: This is Brendan Sullivan to fellow Board Member Andrea. We --

SHAHID AZIM: Do you want to say --

BRENDAN SULLIVAN: -- I'm sort of interested in your thoughts on the Bellalta.

ANDREA HICKEY: I listened very carefully to Attorney Page address the two sort of specific questions I had, and notwithstanding Mr. [was it] Williamson?'s educating us that there may be something in the works, I think we can only sort of vote on what we have before us. So my questions have been answered to my satisfaction by Attorney Page, and I'm personally prepared to make a decision based on the Bellalta case, notwithstanding the fact that we've not had sufficient guidance from the city otherwise.

CONSTANTINE ALEXANDER: Do I take it that you're planning to vote in favor of granting the relief? Because --

ANDREA HICKEY: I am.

BRENDAN SULLIVAN: [Brendan Sullivan --] for the stenographer, "Bellalta" is B-e-l-l-a-l-t-a, for the record. Bellalta versus the Board of Appeal of Brookline, and it
says that -- and I'm reading from the ordinance request for
the referral from the City Council last Monday night --
specifically the SJC held that if an alteration or addition
to a lawful, preexisting, nonconforming single or two-family
includes as an existing dimensional nonconforming, but does
not create any new dimensional nonconformities. Obviously,
you are.

The city is asking to amend -- and again, that's a
slippery slope, and we're not going to basically go down
that road. It's a question of which two of the three which
are triggering a variance that they would change, or
possibly all three.

I guess, Andrea what I'm reading into, if I read
between the lines, and your thought is the key phrase is
that the relief that's being requested to an alteration or
addition to a lawful, preexisting, nonconforming single or
two-family dwelling, will not be more -- will not be
substantially more detrimental than the existing,
preexisting, nonconforming structure.

ANDREA HICKEY: Correct.

BRENDAN SULLIVAN: Okay. All right.

CONSTANTINE ALEXANDER: How do you wish to vote?
BRENDAN SULLIVAN: I would agree with Andrea on that that that is actually the governing standards.

CONSTANTINE ALEXANDER: You would vote in favor of granting?

BRENDAN SULLIVAN: I would. I would vote in favor of granting the special permit.

CONSTANTINE ALEXANDER: Jim?

JIM MONTEVERDE: In terms of commentary, you know, I appreciate what the proponent's done in terms of pulling the building in to the property lines on the two sides. I think that was the part of the discussion last time, so thank you for that.

You know, I feel like they're at the two-yard line, and the only thing that's my stumbling block is really the additional FAR, because it seems like such a small amount that could easily be accommodated in a reduction -- you know, not using the attic, not using something that you could pick up that 100-some odd square feet.

And I would be much more comfortable in supporting it if it could be within the FAR and not exceed it. So --

CONSTANTINE ALEXANDER: As the case is before us tonight, you're prepared to vote against it?
JIM MONTEVERDE: Correct.

CONSTANTINE ALEXANDER: -- unless Mr. Page --

okay, unless Mr. Page wants to offer something different.

JIM MONTEVERDE: Right.

CONSTANTINE ALEXANDER: So your vote is a no?

JIM MONTEVERDE: Correct. Okay, Laura?

LAURA WERNICK: Well, I would actually just take
the flip side of what Jim just said, in that I don't think
the 100 square feet is going to make any difference to the
neighbors. If there is actually 100 square feet removed, it
will not change the massing significantly, so it -- the
neighbors will not have -- I don't think there will be any
noticeable change.

And given that, and Mr. Page's commentary, I would
vote in favor of this plan.

CONSTANTINE ALEXANDER: Thank you. And there's --
my vote yes. I am prepared to vote, and will, vote in favor
of granting the relief that's being sought. But I would
again remind the petitioner that the case may not be over
tonight, and depending on the city's lawyers and the
building inspector decide.

But on the case with regard to the special permit
that's requested, special permits, as I may have said earlier, are not a difficult standard to meet, and I believe the petitioner does meet the standards, which I'm going to go through in a second when I make my motion.

So I will vote in favor. And that would make four votes out of five, but I need to frame -- I should have done this before -- a formal motion. And I'm not going to resolicit after I make that motion, because you've indicated -- all -- everybody's indicated how they want to vote on it.

So, the Chair moves that we make the following findings: That the requirements of the ordinance cannot be met, the ordinance as now written, without the zoning relief that's being requested.

That traffic generated or patterns of access or egress resulting from what is being proposed will not cause congestion, hazard, or substantial change in established neighborhood character. In this regard, I think it's quite clear that what is being proposed will not cause congestion or hazard.

There has been testimony from the neighbors that there will be a substantial change in established neighborhood character -- that's the words of the ordinance,
not the words that they expressed.

I for one do not believe that there will be a substantial change in established neighborhood character. I think what is at the heart of this are design issues. I think the neighbors do not like the design of what is being proposed, and find it inconsistent with the neighborhood. Whether that's true or not is irrelevant from a zoning point of view; we're not an architectural review Board, we're a zoning Board.

That the continued operation of or development of adjacent uses, as permitted by the ordinance, will not be adversely affected by the nature of the proposed use. And again, I don't see any adverse effect, should we grant the relief tonight.

No nuisance or hazard will be created to the detriment of the health, safety and/or welfare of the occupant of the proposed use -- and I hope that's true -- or the citizens of the city.

And that generally, what is being proposed will not impair the integrity of the district or adjoining district, or otherwise derogate from the intent and purpose of this ordinance.
So on the basis of these findings, the Chair moves that we grant the special permit requested on the condition that the work proceed in accordance with plans submitted -- prepared by Sam Kachmar [K-a-c-h-m-a-r] Associates dated, or the cover page at least is dated 01/07/2021, and that cover page has been initialed by the Chair.

And as I said, we have four votes in favor, one vote against, and the special permit is granted. Case over.

SHIPPEN PAGE: Thank you very much, members of the Board. I appreciate it.

CONSTANTINE ALEXANDER: Thank you.

ANDREA HICKEY: Thank you, Councillor.

COLLECTIVE: Thank you.

ANDREA HICKEY: I'm waiting for an official bye-bye.

JIM MONTEVERDE: Exactly. We're all hanging here, Mr. Chair.

ANDREA HICKEY: Gus, give us a wave.

JIM MONTEVERDE: I think the bell rang. I think we're all set to go. All right. Goodnight, all.

ANDREA HICKEY: Stay safe, everyone.

JIM MONTEVERDE: Bye-bye.
ANDREA HICKEY: Bye.

[00:00 p.m. End of Proceedings]
CERTIFICATE

Commonwealth of Massachusetts

Middlesex, ss.

I, Catherine Burns, Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that the above transcript is a true record, to the best of my ability, of the proceedings.

I further certify that I am neither related to nor employed by any of the parties in or counsel to this action, nor am I financially interested in the outcome of this action.

In witness whereof, I have hereunto set my hand this 22nd day of January, 2021.

Notary Public

My commission expires:

August 6, 2021
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